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Via electronic mail (dhasegawa@cityofboise.org)

September 24, 2021

The Board of the Harris Ranch Community Infrastructure District No. 1 (“HRCID”)
c/o David Hasegawa, District Manager
150 N. Capitol Blvd.
Boise, Idaho 83702

Re: Completeness Letter – 2007 Conservation Easement

Dear Members of the Board:

This letter is a follow-up to a request received for a detailed analysis of how the above payment request conforms to both the requirements of Title 50, Chapter 31 of Idaho Code (the “**CID Act**”) and the District Development Agreement No. 1 for the Harris Ranch Community Infrastructure District No. 1 (the “**Development Agreement**”). As noted below, this request does meet the letter of the CID Act and the Development Agreement and is eligible for reimbursement.

Background

This payment request is associated with a conservation easement granted by Harris Family Limited Partnership (the “**Partnership**”) dated November 28, 2007 and recorded as that certain Deed of Conservation Easement recorded in the records of Ada County as Instrument No. 108117302 on December 23, 2008 (the “**Conservation Easement**”). The Conservation Easement was granted in connection with that certain “Development Agreement Parkcenter Boulevard Extension to Warm Springs Avenue, Including the East Parkcenter Bridge dated July 29, 2005” (the “**Bridge Agreement**”), which permitted the construction of the East Parkcenter Bridge that, in turn, allowed for development of the real property located within the Harris Ranch Community Infrastructure District No. 1 (the “**HRCID**”).

As noted in prior correspondence, the Bridge Agreement was a multi-party, public-private partnership that allowed for the construction of the East Parkcenter Bridge. Prior to that construction, vehicular access to the areas that include the HRCID was constrained and a traffic corridor in addition to E. Warm

Springs Ave. was required. In a nutshell, with the financial and real property contributions of the Partnership and the Barber Mill Company as identified in the Bridge Agreement, Ada County Highway District (“ACHD”) was able to move forward with the construction of the East Parkcenter Bridge. The Partnership’s contributions included a cash deposit of \$3,500,000 (ultimately repaid), as well as provision of certain wetlands areas required for wetlands mitigation for bridge construction.

As also noted in prior correspondence and in connection with certifications submitted with this letter:

- Neither the Partnership nor Barber Valley Development, Inc. (“BVD”) took state or federal income tax charitable deductions for the value of the real property subject to this payment request;
- Neither the Partnership nor BVD were repaid the \$7.00 per square foot reimbursement identified in Section 6.1(d) of the Bridge Agreement; and
- Neither the Partnership nor BVD retained any portion of the ~\$1,300,000 payment identified in Section 5.3 of the Bridge Agreement (as amended), with all of those payments (and more) going to a “Services Agreement” for wetlands development.

For reference, while this is not a scale drawing, the general location of the Conservation Easement is shown below:



Conformity with the Development Agreement

The Development Agreement provides the roadmap for reimbursement of eligible projects within HRCID. Much of the Development Agreement contemplates *construction* of projects; however, we know that the CID Act also permits the acquisition of real property interests. A review of the Development Agreement therefore must consider that there are no construction costs associated with this payment request – only the value of the real property.

Compliance with Applicable Codes. Per Section 2.1(b) of the Development Agreement, no construction was undertaken and no codes are applicable. Neither the Partnership nor BVD are aware of any construction or development code requirements that are implicated by the Conservation Easement.

Public Bidding. Section 2.2 requires conformity with public bidding requirements; however, because this is a request associated with an interest in real property, public bidding requirements do not apply.

Cost Review. Sections 2.3 and 3.2(a) require that all project costs be submitted to the District Engineer for review. No construction costs are part of this payment request; accordingly, there was no public bid and there is no cost review to be undertaken.

Prior Conveyance. The real property underlying the Conservation Easement remains in Partnership ownership; however, it is located in an easement in favor of a political subdivision of the State of Idaho. The Conservation Easement was originally conveyed to the Idaho Foundation for Parks and Lands (as “Holder”) with ACHD retaining third-party enforcement rights.¹ Thereafter, an Assignment and Assumption Agreement dated September 23, 2019 was executed and subsequently recorded on October 8, 2019 in Ada County as Instrument No. 2019-097428 (the “Assignment”).² This Assignment followed certification that the U.S. Army Corps had confirmed that The Wetlands Group, Inc. had completed its work and the requirements of the associated U.S. Army Corps Clean Water Act 404 Permit had been satisfied. As part of discussions to ensure permanent public interest and long-term maintenance, the Idaho Foundation for Parks and Lands assigned and the City of Boise accepted the rights of Holder pursuant to the Conservation Easement. Accordingly, the Conservation Easement is currently located in an easement in favor of a political subdivision of the State of Idaho. Per Sections 2.4 and 3.1(d) of the Development Agreement, any prior dedications are not a bar to reimbursement.

Conditions for Payment. Section 3.3 includes a number of conditions for payment, outlined below:

Item	Description	Status
(i)	Certificate of Engineers	Not applicable
(ii) , (v)	Evidence of public ownership	The Conservation Easement is located in an easement in favor of the City of Boise per the Assignment
(iii)	Environmental assessments	Not requested – no evidence of contamination; U.S. Army Corps has approved wetland construction
(iv)	Conveyance to public entity	Easement conveyed to City of Boise per the Assignment
(vi)	Assignment of warranties	Not applicable
(vii)	Acceptance letters	Assignment is executed by City of Boise, indicating its acceptance of the Conservation Easement
(viii)	Other documents requested by District Manager	None requested to developer’s knowledge

¹ A subsequent, unrecorded “Amendment No. 1 – Deed of Conservation Easement and Assignment of Third Party Enforcer” was executed, pursuant to which ACHD assigned its enforcement rights to The Wetlands Group, Inc. This document was not recorded and does not relate to ownership. A copy can be provided to CID Staff upon request.

² A true and accurate copy of the Assignment is attached as Exhibit A.

Conformity with the CID Act

This payment request is also eligible for reimbursement per the CID Act, as shown below:

Public Ownership. Section 50-3101(2) requires that community infrastructure must be owned by the state or a political subdivision. Per Section 50-3105(2), community infrastructure may be located in easements in favor of a political subdivision of the State of Idaho. Per the Assignment, the Conservation Easement is in favor of the City of Boise, meaning it is eligible under the public ownership rule.

Definition of Community Infrastructure. The Conservation Easement is eligible for reimbursement under the definition of community infrastructure. Section 50-3102(2) of the CID Act incorporates Section 67-8203(24), which includes “bank and shore protection and enhancement improvements,” as well as “[p]arks, open space and recreation areas...” The Conservation Easement qualifies under either definition.

Substantial Nexus and Direct or Indirect Benefit. Section 50-3102(2) requires that community infrastructure have a substantial nexus and a direct or indirect benefit to the district. The term substantial nexus is not defined in the CID Act; however, in its typical usage, this refers to the overlap between the development of the HRCID, the needs that development creates, and the role the project plays in satisfying those requirements. Whether there is a direct or indirect benefit is a very similar analysis.

In this case, the Conservation Easement is directly connected to the development of all of the real property located in the HRCID. Without the wetland mitigation provided by the Conservation Easement, the East Parkcenter Bridge could not have been constructed and development in the HRCID could not have gone forward—a direct nexus to the development of the HRCID and a clear benefit to the HRCID. In addition, because of the Conservation Easement’s location immediately south of E. Warm Springs Ave., it provides open space and wildlife habitat that is a direct benefit to the HRCID residents. The Conservation Easement is accessible via the Greenbelt and the Dallas Harris Legacy Pathway, shown below:



Source: Google Earth imagery

Ongoing benefit to the HRCID is ensured due to the easement in favor of the City of Boise that was provided with the Assignment, discussed above.

Fronting Individual Single-Family Residential Lots. The “fronting” standard is not applicable to this payment request.

Conclusion

We believe that the Conservation Easement is a clear benefit to the HRCID as it provides additional open space, trail areas, and wetland as well as wildlife habitat. It has a direct nexus to the development of HRCID in that it was part of the original agreement that allowed the HRCID to be developed in the first place. This request is eligible for reimbursement under the CID Act and the Development Agreement.

Very truly yours,



T. Hethe Clark
HC/bdb

c: CID Board Members
CID Staff (Jim Pardy (CID Engineer), Rob Lockward (CID Counsel))
Client

EXHIBIT A

After Recording, Return To:

ACCOMMODATION

FOR RECORDING INFORMATION

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "**Assignment**"), dated effective as of 9/23, 2019, (the "**Effective Date**") is made between the Idaho Foundation for Parks and Lands, Inc., an Idaho corporation ("**Assignor**"), and the City of Boise City, a body corporate and politic in the state of Idaho, by and through its Department of Parks and Recreation ("**Assignee**"). Assignor and Assignee may be referred to herein as a "Party" or "Parties", as the case may be.

RECITALS

A. On November 28, 2007, Assignor (as "Holder") entered into that certain Deed of Conservation Easement recorded on October 23, 2008 in the records of Ada County as Instrument No. 108117302 (the "**Conservation Easement**"), with Harris Family Limited Partnership, an Idaho limited partnership (as "**Grantor**") and the Ada County Highway District, a body corporate and politic ("**ACHD**"), having a third-party right of enforcement.

B. In April 2010, the parties to the Conservation Easement entered into an Amendment No. 1 to Deed of Conservation Easement and Assignment of Third-Party Enforcer (the "**First Amendment**"). The First Amendment assigned certain third-party enforcement rights to The Wetlands Group, LLC, an Idaho limited liability company (the "**Wetlands Group**") in connection with U.S. Army Corps Clean Water Act 404 Permit #NWW-2006-615 B01 (the "**Permit**").

C. By letter dated January 17, 2014, the U.S. Army Corps confirmed that the requirements under the Permit have been satisfied and Grantor has assumed long-term maintenance responsibility for the site.

D. Pursuant to Section V of the Conservation Easement, Holder of the Conservation Easement may assign its interest with thirty (30) days' prior written notice.

E. In connection with the arrangements associated with long-term maintenance of the Conservation Easement, Assignor now desires to assign its rights, title and interest in the Conservation Easement (as amended by the First Amendment), and Assignee desires to accept and assume said responsibilities, as of the Effective Date.

NOW, THEREFORE, for the recitals set forth above, which are incorporated herein, and *other* good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

1. Assignment. Pursuant to Section V of the Conservation Easement, Assignor hereby grants, conveys, assigns, and transfers to Assignee all of Assignor's right, title, and interest in the Agreement, together with any and all rights and appurtenances thereto in any way belonging to Assignor.

2. Acceptance and Assumption. Assignee hereby accepts and assumes all of Assignor's right, title and interest in the Conservation Easement and First Amendment and agrees to all of the restrictions, rights, and provisions set forth therein, and agrees to assume all liabilities of "Holder" under

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ELECTRONICALLY RECORDED - DO NOT REMOVE THE COUNTY STAMPED FIRST PAGE AS IT IS NOW INCORPORATED AS PART OF THE ORIGINAL DOCUMENT.

said instruments. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors in interest, and assigns.

3. Additional Acts. The Parties agree to execute such other documents and perform such other acts as may be necessary to effectuate this Assignment.

4. Entire Agreement. This Assignment constitutes the entire agreement of the Parties relating to the subject matter hereof.

5. Counterparts. This Assignment may be executed in two or more counterparts, each of which shall be deemed an original copy, and all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Assignment to be effective as of the Effective Date.

ASSIGNOR:

IDAHO FOUNDATION FOR PARKS AND LANDS, INC.,
an Idaho corporation

By: Sharon Hubler
Name: Sharon Hubler
Title: Vice President

ASSIGNEE:

CITY OF BOISE CITY

David H. Bieter
David H. Bieter, Mayor

Attest:

Lynda Lowry
Lynda Lowry, Ex Officio City Clerk

[notary acknowledgments on following page]

STATE OF IDAHO)
) ss.
County of Ada)

On this 15 day of July, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared Sharon Hubler, known or identified to me to be the Vice President of Idaho Foundation for Parks and Lands, Inc., the individual who executed the instrument on behalf of said corporation, and acknowledged to me that such person executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



[Signature]
Notary Public for Idaho
Residing at Meridian, ID
My commission expires: 6/23/20

STATE OF IDAHO)
) ss.
County of Ada)

On this 23rd day of September, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared David H. Bieter and Jade Riley, known or identified to me to be the Mayor and Ex-Officio City Clerk of Boise City, Idaho, the individuals who executed the instrument on behalf of Boise City, and acknowledged to me that such persons executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



[Signature]
Notary Public for Idaho
Residing at Boise, ID
My commission expires: 12/16/20